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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,656	08/28/2001	Arthur E. Uber III	P 265228 VI/98-013.FWC.C.	5530
21140	7590	05/04/2005	EXAMINER	
GREGORY L BRADLEY MEDRAD INC ONE MEDRAD DRIVE INDIANOLA, PA 15051			DESAUTO, MATTHEW F	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,656	UBER, ARTHUR E.	
	Examiner	Art Unit	
	Matthew F DeSanto	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 13-18 and 63-91 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 13-18 and 63-91 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13-16, 64, 65, 66, 69, 72-75, 78, and 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts (USPN 4,754,786).

Roberts discloses an injection device with a first fluid source, a second fluid source, a fluid path, and a mixing element; as well as a metering device, a control unit, and a fluid assurance device. The “reusable portion” being the flow path from the mixing element down. The “disposable portion” being the needle connector (Ref. # 38, Figure 2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-18, 63-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (USPN 4,710,166), and further in view of Wortich (USPN 4,750,643).

Thompson et al. discloses an injection device with a first fluid source and a second fluid source, as well as a mixing device (static and Y-connector), a pump or metering device, a control unit, valves and an electronic interface. (See Figures 1, and 11), but fails to disclose a fluid assurance device and multiple reusable and disposable portions.

Wortich discloses a sterile fluid dispensing system that comprises a fluid source, a fluid assurance element, multiple disposable portions, and a reusable flow path. (Figure 1 and entire reference)

At the time of the invention it would have been obvious for one of ordinary skill in the art to combine Thompson et al. with Wortich because Wortich teaches the economic benefit of using the setup disclosed by Wortich as well as the ability to infuse fluid into multiple patients.

5. Claims 13-18, 63-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orkin et al. (USPN 4,925,444) in view of Wortich (USPN 4,750,643).

Orkin et al. discloses an injection device with a first fluid source and a second fluid source, as well as a mixing device, a pump or metering device, a control unit, valves and an electronic interface, a fluid assurance element and one reusable portion and a disposable flow path, (Figure 1 and entire reference), but fails to disclose multiple reusable and disposable portions.

Wortich discloses a sterile fluid dispensing system that comprises a fluid source, a fluid assurance element, multiple disposable portions, and a reusable flow path. (Figure 1 and entire reference)

At the time of the invention it would have been obvious for one of ordinary skill in the art to modify Orkin et al. because Wortich teaches the economic benefit of using the setup disclosed by Wortich as well as the ability to infuse fluid into multiple patients.

The examiner would also like to note that the multiplication of the infuse lines is a mere duplication of parts and has been indicated by the courts as taking only routine skill in the art, which would further support the 103 Rejections made above.

6. Claims 13-18, 64-70, 72-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kampfe et al. (USPN 5,450,847) and further in view of Wortich (USPN 4,750,643).

Kampfe et al. discloses an injection device with a first fluid source (12), a second fluid source (14), a fluid path (16, 22, 24), and a mixing device (20); as well as a metering device (26,28,30), a control unit (42), and a fluid assurance device (60,62) (Figure 1 and entire reference). As well as wherein one of the sources is a contrast source and wherein one of the sources is a diluents source (column 8, line 61 - column 9, line 65), but kampfe fails to disclose delivering the liquid to several patients.

Wortich discloses a sterile fluid dispensing system that comprises a fluid source, a fluid assurance element, multiple disposable portions, and a reusable flow path. (Figure 1 and entire reference)

At the time of the invention it would have been obvious for one of ordinary skill in the art to modify Kampfe because Wortich teaches the economic benefit of using the setup disclosed by Wortich as well as the ability to infuse fluid into multiple patients.

The examiner would also like to note that the multiplication of the infuse lines is a mere duplication of parts and has been indicated by the courts as taking only routine skill in the art, which would further support the 103 Rejections made above.

Response to Arguments

7. Applicant's arguments filed 2/09/05 have been fully considered but they are not persuasive.
8. In response to applicant's argument that a portion of the injection apparatus has a reusable and disposable portion is a mere recitation of the intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).
9. The examiner would like to note, that no structure or specific characteristic is being claimed that differentiates the prior art from the claimed invention. Therefore, the examiner interpretation that the prior art can be reused and can be disposed of after being used is intended use. Since there this applicant is an apparatus claim, there should be structural differences with regards to patentability, see MPEP section 2114.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew DeSanto
Art Unit 3763
May 2, 2005



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